



U.S. Department of Justice

Environment and Natural Resources Division

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SEP 28 2006

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Santa Rosa, CA 95402-5469

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Walnut Creek 94596

David McFadden
Sonoma County Counsel
575 Administration Drive
Room 105A
Santa Rosa, CA 95403

Re: Northern California River Watch v. Sonoma County Water Agency;
United States District Court for the Northern District of California
(Sacramento), Civil No. 3:06-CV-4182 CRB

Dear Messrs. Silver, Bernhaut, McGraw and McFadden:

As required by the Clean Water Act ("CWA"), 33 U.S.C. 1365(c)(3), plaintiffs' counsel sent the Attorney General a copy of the complaint in the above captioned citizen suit. Citizen enforcement actions are an integral component of the Act's overall enforcement scheme. The United States values the contribution that responsibly pursued citizen suits make to protecting our nation's navigable waters.

Resources Available for Citizen Suits

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The Department of Justice ("Department") has assigned me to answer questions or otherwise assist the parties in achieving a fair and expeditious resolution of this litigation. Please feel free to contact me at (202) 514-1442. The Department has some expertise in the resolution of certain common legal and practical issues that may arise in drafting consent decrees in citizen suit actions, and we are pleased to consult with counsel or review early drafts of such documents.

The Office of Enforcement and Compliance Assurance of the Environmental Protection Agency (EPA) is also available to assist you. For Clean Air Act cases, please contact Charlie Garlow at 202-564-1088; for Clean Water Act cases, please contact Sherry Milan at 202-564-2619. EPA has information and computer programs, such as the BEN program for calculating the economic benefits a defendant may have enjoyed as a result of its non-compliance, that are available to the public and may be of assistance to the parties in this action. EPA also has developed a Supplemental Environmental Project (SEP) Policy, which provides guidance in designing environmentally beneficial projects that may be part of a settlement. Please contact EPA for information about these resources and their availability to persons outside the federal government. EPA can also put you in touch with a contact in the appropriate regional office for the region in which you are litigating.

Additionally, the United States participates as amicus curiae in some citizen enforcement actions. Please contact the Department if a legal issue arises in this case that you believe may be of interest to the United States.

Review of Consent Judgements

As you may be aware, the citizen suit provisions require that citizen suits be resolved by consent judgment and that the United States be given the opportunity to review any proposed consent judgment before its entry by the court. EPA's regulations provide for service of a copy of a proposed citizen suit consent judgment on the Department of Justice at a specified street address. 40 C.F.R. 135.5. As a result of new security procedures, mail sent to that address is automatically subjected to special mail handling procedures that may delay its arrival for a month or longer. **We therefore request until further notice that any proposed consent judgments be sent to the following address:**

Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 4390
Ben Franklin Station
Washington, DC 20044-4390

The Department will treat this as satisfying the statutory requirement to serve the United States Department of Justice. If a copy of the consent judgment is sent only to the address listed in the regulations, the Department may not regard the 45-day review period as commencing until the special handling process has been completed. (We would also be pleased to arrange for service of consent judgments by fax or email if you would prefer. Please call the undersigned, or call the main number for the section at (202) 514-1442, to discuss the process for doing so.)

In its review, the United States seeks to ensure that the proposed consent judgment complies with the requirements of the Act and is consistent with its purposes. See Local 93, Int'l Ass'n of Firefighters, AFL-CIO v. City of Cleveland, 478 U.S. 501, 525-26 (1986) (consent decree should conform with and further the objectives of the law upon which the complaint was based). For example, if the defendant has been out of compliance, the proposed consent judgment should require the defendant to come into prompt compliance with the Act and should include a civil penalty or other payment sufficient to deter future violations. Please note that payments denominated as civil penalties must be paid to the United States Treasury and should be sent to Sandra Doyle at the following address:

Sandra Doyle
Debt Collection Specialist
Environment & Natural Resources Division
Executive Office
P.O. Box 7754
Ben Franklin Station
Washington, D.C. 20044-7754
(202) 616-3135

A consent decree may also include payments to third parties to carry out a SEP so long as there is a sufficient nexus between the SEP and the violations contained in the complaint. If the consent decree you are submitting includes a SEP, we ask that you provide as detailed a description of the SEP as possible. This will allow the United States to evaluate whether there is a sufficient nexus between the SEP and the alleged violations. For guidance, you may consult EPA's SEP Policy, available at <http://www.epa.gov/compliance/civil/seps/index.html>. We also ask that you include a letter from any third party recipient of SEP funding to the undersigned, stating that the SEP recipient 1) has read the proposed consent judgment; 2) will spend any monies it is to receive under the proposed consent judgment for the purposes specified in the proposed consent judgment; 3) is a 501(c)(3) tax exempt organization; and 4) will not use any money it receives under the proposed consent decree for lobbying purposes. We believe this certification by the SEP recipient helps ensure that the SEP advances the purpose of the CWA and serves the public interest.

The Clean Air and Clean Water Act require that all "consent judgments" be subject to review by the United States Department of Justice and EPA before entry. The term "consent

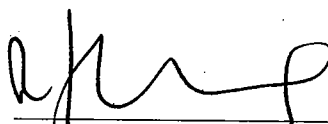
judgment" has a broad meaning, and encompasses all instruments entered with the consent of the parties that have the effect of resolving the case. A document stipulating to dismissal of a case, including any related agreement, would, for example, be within the scope of this language. Such a document and any associated instrument or agreement must be submitted to the United States for review, notwithstanding any provisions purporting to maintain the confidentiality of such a document. The Department will monitor citizen suit litigation to review compliance with this requirement. Complying with this requirement will also avoid concerns about the enforceability and validity of agreements entered into under these citizen suit provisions.

Conclusion

We would be happy at any time to discuss these and other principles underlying the application of the environmental laws. It is our hope that through discussions early in the settlement process we can provide useful information and help to facilitate the prompt, fair and appropriate disposition of these cases. The United States notes for the record that, notwithstanding such discussions, it is not bound by the resolutions of citizen suit matters. See, e.g., Hawthorn v. Lovorn, 457 U.S. 255, 268, n.23 (1982) (Attorney General is not bound by cases to which he was not a party).

Please feel free to contact the undersigned at any time if you have any questions about citizen enforcement generally or the role of the United States in such cases.

Sincerely,



R. Justin Smith, Attorney
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Environment & Natural Resources Div.
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Washington, D.C. 20044-4390

cc: Karen Dworkin - DOJ/EES
Henry Friedman, DOJ/EES Reg IX
Sherry Milan - EPA/HQ
Laurie Kermish - EPA Reg IX